

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR MEETING

+ + + + +

MONDAY

DECEMBER 10, 2007

+ + + + +

The Regular Meeting of the District of Columbia Zoning Commission convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 6:30 p.m., Anthony J. Hood, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD	Chairperson
GREGORY N. JEFFRIES	Vice-Chairperson
CURTIS ETHERLY, JR.	Commissioner
MICHAEL G. TURNBULL	Commissioner (AOC)
JOHN PARSONS	Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN	Secretary
DONNA HANOUSEK	Zoning Specialist
ESTHER BUSHMAN	General Counsel

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER
JOEL LAWSON
KAREN THOMAS
MATT JESICK
STEPHEN MORDFIN
STEVE COCHRAN
TRAVIS PARKER

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTIG, ESQ.

The transcript constitutes the
minutes from the Regular Meeting held on
December 10, 2007.

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P-R-O-C-E-E-D-I-N-G-S

6:43 p.m.

CHAIRPERSON HOOD: Let me say good evening. We apologize for being 15 minutes late. We were trying to work out some issues. The meeting will please come to order. Good evening, ladies and gentlemen. This is the December 10th, 2007 public meeting of the DC Zoning Commission of the District of Columbia. My name is Anthony J. Hood. Joining me this evening are Vice Chairman Jeffries, Curtis Etherly, John Parsons, Peter May and Mike Turnbull.

We are also joined by the Zoning Commission staff, Ms. Sharon Schellin and Donna Hanousek and Office of Attorney General, Mr. Riddig and also the Office of Planning Staff, Ms. Steingasser and her staff. I think I've got everybody on the dias.

Okay, copies of today's meeting are available to you and are located at the door. We do not take any public testimony at

1 our meetings unless the Commission requests
2 someone to come forward. Please be advised
3 that this proceeding is being recorded by a
4 Court Reporter and it's also webcast live.
5 Accordingly, we must ask you to refrain from
6 any disruptive noises or actions in the
7 hearing room. Please turn off all beepers and
8 cell phones. Does that staff have any
9 preliminary matters?

10 MS. SCHELLIN: No, sir.

11 CHAIRPERSON HOOD: If not, for
12 those who are here, and I'm glad we have a
13 crowd actually, because tonight is history in
14 the making and I'm going to begin with Mr.
15 Turnbull and I'm going to ask if he could read
16 something that he had done for one of our
17 colleagues who served the City and this
18 Commission well for over thirty and a half
19 years.

20 COMMISSIONER TURNBULL: Thank you,
21 Mr. Chair. I think we may have mentioned at
22 one of our other hearings but the Honorable

1 Mr. Parsons is leaving us, he's retiring and
2 his actual -- July 14th of this year was his
3 30th year on the Zoning Commission which I
4 think is an incredible achievement. And I
5 know I personally have been honored and
6 privileged to have served with him. I think
7 he's one of our most sagacious members. I
8 think his knowledge is amazing going back over
9 the years and remembering some of the cases
10 that he's sat on.

11 Anyway, we had a flag flown in
12 honor of Mr. Parsons on July 14th over the
13 United States Capitol and what we had on the
14 certificate basically says, "This flag was
15 flown for John G. Parsons, FASLA," and for
16 those of you who are not familiar with all
17 those acronyms, it's Fellow of the American
18 Society of Landscape Architects, "in
19 recognition of his 30 years of inspiring
20 service as a member of the Zoning Commission
21 of the District of Columbia. The flag was
22 respectfully requested by his fellow

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1 Commissioners and the staff of the Zoning
2 Commission". So John, congratulations and
3 we're going to miss you.

4 CHAIRPERSON HOOD: And also, if I
5 could just add, Mr. Parsons, I had a chance --
6 I heard about you long before I got on the
7 Zoning Commission back in 1998 from the former
8 late Councilman Harry Thomas, Sr. And working
9 with you has been a privilege and an honor.
10 I've learned a lot from you and I think this
11 city is better served of the 30-1/2 years that
12 you've committed to this city and I see a lot
13 of your work as I go up and down the streets,
14 height, density and whatnot. And I can tell
15 you that --

16 VICE-CHAIRPERSON JEFFRIES:
17 Trellises.

18 CHAIRPERSON HOOD: Trellises.

19 VICE-CHAIRPERSON JEFFRIES:
20 Rooftop.

21 CHAIRPERSON HOOD: But again, this
22 city is better served because John Parsons

1 came this way and served on the Zoning
2 Commission. I will definitely miss you. I
3 tried to imagine when you announced your
4 retirement, I don't even remember the Zoning
5 Commission with John Parsons sitting next to
6 me. So it's going to be a void but you will
7 definitely be missed and it's been a pleasure
8 and an honor for me to be able to serve with
9 John Parsons. Let me see if my colleagues
10 have any --

11 VICE-CHAIRPERSON JEFFRIES: And
12 just quickly, I really am also quite honored
13 that your last three years on the Zoning
14 Commission, I was part of that, you know, very
15 achieved period of time and I wish you all the
16 best. I hope that you are going to fish or do
17 whatever it is that you want to do and stay
18 away from all this land use business and enjoy
19 yourself. So thank you very much and I've
20 learned quite a bit sitting next to you when
21 I was down that way. So, thank you.

22 COMMISSIONER PARSONS: Thank you

1 all so much. I was reflecting on this and the
2 first meeting of the Zoning Commission that I
3 came to was the 699th meeting and as you'll
4 notice the agenda today is the 1239th meeting.
5 If my math is right, that's 540 evenings that
6 I've spent with many of you here in the
7 audience, which my wife reminds me of
8 constantly, by the way.

9 But of the panels I sit on, the
10 National Capitol Planning Commission, the
11 Memorial Commission, I served on PADC, this is
12 the one, this is the Commission that
13 represents a democratic process that this
14 country is all about. That is the citizens
15 have a full opportunity to participate in what
16 we do and as a matter of fact, the citizens
17 not only here but on the BZA bring to us
18 arguments that we can employ in our decision
19 making, unlike many others who operate in a
20 lesser circumstance.

21 As you know, some of our hearings
22 go two or three nights to hear that opinion.

1 I also wanted to comment on the current staff,
2 not only of the Zoning Commission but the
3 Office of Planning. I would say in my 30
4 years, these are the best staffs that we have
5 had and I don't do that gratuitously. I mean
6 that with all sincerity, that we are at a high
7 point in that aspect of what we're doing. But
8 what I will miss the most on this Commission
9 is the family. Unlike the other Commissions
10 that I sit on of 12 or 10 or 15 members, this
11 is a family, a tight-knit group of five people
12 that work towards the right decisions. And I
13 will miss you dearly. I really mean that
14 sincerely. But I want to introduce Peter May,
15 who is standing in the corner over there in
16 the door. Many of you know Peter. I am
17 absolutely delighted that he will be my
18 replacement. We've had the pleasure now and
19 unheard of in the Federal Government, of
20 hiring somebody actually 60 days before I'm
21 leaving. So I've had this great brain dump
22 going on in passing my knowledge onto Peter,

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1 but as you know, he served on this Commission
2 as a representative of the Architect of the
3 Capitol some five years ago. That's where I
4 came to know him. I have a great deal of
5 trust and we virtually agree on everything but
6 then again, January 3rd, that might change as
7 I move on. But at this point, at least, we're
8 on absolutely the same wave length and I'm
9 sure he will do this job and serve the city as
10 I would have done.

11 So I thank you very much and
12 believe me, it has been my pleasure. Thank
13 you very much.

14 CHAIRPERSON HOOD: Words cannot
15 express when somebody has been here 30-1/2
16 years. So what I would like to do is if my
17 colleagues would join me, let's give Mr.
18 Parsons a standing ovation.

19 (Applause)

20 CHAIRPERSON HOOD: All right, now
21 down to the hard part. Okay, what I would
22 like to do, I see we have been joined by the

1 council member of Ward 2, Council Member Jack
2 Evans. I would ask him to come forward
3 because we're always respectful of our council
4 members. But what I would ask him to do is
5 not to talk about any specific case.

6 I know that was hard, but actually
7 at the sit down -- I will tell you and I think
8 all of us are in tune to exactly why you're
9 here but we at sit down, council member, I ask
10 that you not talk about any specific case. If
11 you want to send us a letter, depending upon
12 what happens tonight, if you want to watch to
13 see what we do with that particular case, then
14 I think that is -- Mr. Rittig, you can help
15 me. I think that is legally correct, the way
16 to handle that. I don't want to get all five
17 of us in trouble. Then we won't have anybody
18 to deal with the Seth Downer (phonetic) case
19 at all.

20 MR. RITTIG: Well, the only --
21 typically at public meetings there's no
22 testimony allowed at all. This is a contested

1 case potentially, and so you have to base your
2 decision entirely on the record which has not
3 opened yet. So --

4 MR. EVANS: Well, Mr. Hood,
5 Chairman Hood, thank you very much and members
6 of the Zoning Commission and I too want to
7 express my wholehearted thanks to John
8 Parsons. I have worked with -- I have been on
9 the Council, as many of you know, I'm the
10 longest serving member, having been there 16
11 years, represent Ward 2, which over that 16
12 years has had the lion's share of many of the
13 zoning issues in this city. And I have not
14 found anyone that I can work with as well as
15 John. And so I want to thank you for your
16 years of service, 30 years of service. I hope
17 I'm not on the Council of the District of
18 Columbia 30 years, but I'm glad that you could
19 do the Zoning Commission that long. And
20 you've really performed well for this city.

21 COMMISSIONER PARSONS: Thank you,
22 Jack. It's amazing how fast 30 years goes.

1 Watch out.

2 MR. EVANS: And I am obviously,
3 down here for case and will respect your
4 wishes not to talk about that particular case.
5 I just hope the Zoning Commission has,
6 obviously as they will, take into all
7 consideration all of the issues and makes a
8 very well-informed decision. It is very
9 important for our city during these times of
10 good times for our city that we make a lot of
11 things happen. And so I'm here to watch.

12 We have many residents from my
13 Ward here in the audience who are very
14 concerned about what happens here tonight and
15 so we trust your judgment and look forward to
16 your decision. Thank you very much.

17 CHAIRPERSON HOOD: Okay, thank you
18 very much, Council Member and I will tell you
19 that particular case is the first one we're
20 hearing actually, so you won't have to stick
21 with us too long. Let me go to the
22 preliminary matters, Ms. Schellin, we don't

1 have any?

2 MS. SCHELLIN: No, sir.

3 CHAIRPERSON HOOD: Okay, our
4 status report, Office of Planning?

5 MR. PARKER: Just a quick report.
6 As you're aware, Mr. Hood, we had our first
7 task force meeting on the comprehensive review
8 of the Zoning Regulations. The meeting went
9 very well, on November 28th. We laid out our
10 work plan over the next couple of years for
11 reviewing our regulations and so far have
12 received a lot of positive feedback on that
13 work plan.

14 Looking forward to meeting with OZ
15 and the Zoning Commission over the next few
16 months with our next task force meeting
17 happening in late January.

18 CHAIRPERSON HOOD: Okay, anything
19 else, Ms. Steingasser?

20 MS. STEINGASSER: No, sir.

21 CHAIRPERSON HOOD: I will tell
22 you, colleagues, Mr. Parker and Ms.

1 Steingasser and Office of Planning did a
2 superb job with the presentation to the point
3 that we're going to have that same
4 presentation, Mr. Parker, I think on Monday.
5 Did an -- is it Monday? Yeah, Monday. Okay,
6 all right, any questions of the Office of
7 Planning?

8 COMMISSIONER PARSONS: Mr.
9 Chairman, I can't let pass the last thing on
10 this particular report, which the staff as --
11 it has to do with open space. And the staff
12 has kept this on here because they know I'd
13 get obnoxious if it wasn't on here and I'm on
14 a guilt trip over the fact that I have
15 proposed an open spaced zone for years and
16 have really don't nothing about it.

17 The purpose of this zone is to
18 protect federal properties that are not
19 subject to zoning but we take for granted such
20 as the Armed Forces Retirement Home, the
21 various reservoirs throughout the city. What
22 we do is the zoning map simply borrows from

1 across the fence, that is all of Rock Creek
2 Park is zoned R-1. The point being that if
3 the government decides to surplus a particular
4 piece of real estate as they did with the
5 McMillan Reservoir, we've taken it for granted
6 it is open space as residents, and suddenly it
7 is C-1 or C-2 or some other zone and is
8 marketable. And what I've been trying to do
9 is -- and I'm guilty about this -- that we
10 haven't built into our zoning regulations some
11 mechanism called open space zoning, that we
12 can apply when these things come forward.

13 It would also apply to cemeteries
14 and other things that we take for granted but
15 could be converted to other uses. And thank
16 you for keeping it on the list of things to
17 do. It currently says to be assigned and
18 possible coordination with NCPC but I urge you
19 not to remove it upon my retirement.

20 MS. STEINGASSER: I can assure
21 you, it will not be removed. We have assigned
22 it to the zoning review, comprehensive zoning

1 ordinance review and it will be one of the
2 things we're looking at along with the
3 different types of the different open space,
4 rec space criteria.

5 COMMISSIONER PARSONS: Right.
6 I've made a commitment that I will never
7 appear before this Commission to testify as a
8 citizen, but this might bring me to it. Thank
9 you.

10 CHAIRPERSON HOOD: Thank you. Any
11 other comments for the Office of Planning?
12 All right, thank you. Let's move right along
13 with our agenda. The first hearing action,
14 Zoning Commission Case Number 07-26. This is
15 the O Street Roadside LLC-Consolidated PUD and
16 Related Map Amendment at Square 389, Lots 829
17 and 830. Ms. Thomas.

18 MS. STEINGASSER: Chairman Hood,
19 Commissioners, the Office of Planning has
20 nothing further to add except to again
21 recommend that the case be set for public
22 hearing. We think the case and the project as

1 proposed merits a public hearing and meets the
2 criteria for such hearing. We think it would
3 be advantageous to let that case go forward.

4 CHAIRPERSON HOOD: Okay, thank
5 you, Ms. Steingasser. Let me just open up my
6 remarks with our regulations which are 3023.1
7 and it's called ex parte communications.
8 3023.1 reads, "In any proceeding that is a
9 contested case within the meaning of DC
10 Official Code 2-5028201 formerly codified DC
11 Code 1-150288, 1999, all members of the
12 Commission shall be prohibited from receiving
13 or participating in any ex parte
14 communications relevant to the merits of the
15 proceedings."

16 What that simply says is when
17 cases are before this Commission, while people
18 may think it is -- like you go to your council
19 member and you try to get your point across
20 and get your -- you lobby your council member,
21 we cannot be lobbied. We're judicial to a
22 point. We cannot be lobbied. And what it

1 does is, and two or three people who have
2 lobbied me know and I cut them off for the
3 record, but I think it's important that people
4 understand that we cannot be lobbied because
5 personally, if you talk to me about this
6 particular case outside of the room, I can't
7 participate here. And I think it's important
8 that we all understand, I'm not lecturing
9 anybody, but I think it's very important. I
10 don't want to seem rude or disrespectful
11 because at the end of the day, I live in
12 Washington DC too, and I'm just using myself
13 as an example. I don't if my other colleagues
14 have received the same things that I have, but
15 I can tell you it puts us in a very unique
16 situation because my parents didn't raise me
17 to be rude or nasty but I can tell you that I
18 do have a regulation.

19

20 And I think the citizens of this
21 city want stuff above board and that's how we
22 try to keep it here on the Zoning Commission.

1 We have in my limited nine years and I have
2 two more to go and I think that's just how we
3 need to keep it. It's always been that way.
4 And I'm not giving anybody a lashing or
5 anything. I'm just giving you information
6 because these are regulations and it's 3023 ex
7 parte communications.

8 When I first got on the Commission
9 it was drilled to me, ex parte was drilled to
10 me, so I try to adhere myself to that and
11 govern myself accordingly. Any other
12 comments?

13 Okay, let's get to the case,
14 enough said on that. Okay, I'll open it up.
15 I won't start it off but I'll open it up.

16 VICE-CHAIRPERSON JEFFRIES: Mr.
17 Chair, I make a motion that we set down Zoning
18 Commission Case Number 07-26 O Street
19 Roadside, LLC-Consolidated PUD and Related Map
20 Amendment.

21 COMMISSIONER PARSONS: Second.

22 VICE-CHAIRPERSON JEFFRIES: It's -

1 - okay, and that is based on the submission
2 revised PUD application dated December 5th,
3 2007.

4 CHAIRPERSON HOOD: Okay, it's been
5 moved and properly seconded. Discussion?
6 Discussion?

7 COMMISSIONER PARSONS: Mr.
8 Chairman, I think they have removed -- the
9 most concern to us was the height of this
10 building and removed these penthouses to bring
11 the scale of this project down to where I
12 think it should be. It's been a very
13 difficult process because of the long
14 involvement with the community, I guess over
15 five years, the Historic Preservation Review
16 Board, but I think we were correct in our
17 assessment that these buildings were simply
18 too large, too massive for this site, which
19 evolved from another process. And I
20 appreciate the developer's response to our
21 concerns and I think it will be a fruitful
22 hearing.

1 CHAIRPERSON HOOD: Any other
2 comments? I will say this, that when I look
3 back at the transcript, we basically had this
4 case for three months -- no, I'm sorry, we
5 didn't have it that long, three weeks, four
6 weeks? And I look back at something Ms.
7 Steingasser, and I hope she'll forgive me for
8 going back through the transcript because I
9 tried to review this and see how we've come to
10 this date. It says the staff was also very
11 concerned about the Office of Planning and
12 when you get to the public hearing, hopefully
13 you'll hear it from the developer themselves.

14 We wrestled with the height issue
15 for many months back and forth and we also
16 felt that 90 feet was the maximum. Now,
17 obviously, something changed there but I'm
18 just reading the transcript. So I guess I'm
19 saying this to all those listening; we got
20 this for three weeks and if they dealt with it
21 for months, then we have concerns, too. The
22 bottom line for this Commission is to look at

1 what if you didn't agree with it, then we
2 would also still be the ones here to help
3 between what the developer is doing and what's
4 best for the community. And I think that this
5 Commission in this case did its job.

6 Now, I will tell you what I asked
7 for was a prospectus. I wanted to see a
8 prospectus with 110 feet. I think the
9 prospectus we got was 90 feet. So I have
10 nothing to compare it to. That's fine, we can
11 deal with all that at the hearing.

12 I think everybody knows a
13 development in that neighborhood is needed and
14 I'm sure the community has been working, the
15 way I understand and read, for a long time.
16 So I encourage everyone to come down and
17 testify at the hearing. I don't know when
18 that date's going to be. But I will tell you
19 this from what I've seen in the record and a
20 few of the comments, Ms. Schellin, don't put
21 any opposition down for people to sign because
22 obviously, everybody's on board with this

1 project and I don't think we're going to have
2 any opposition that night. I will watch the
3 sign-in sheet to see.

4 But anyway, enough discussion, any
5 further discussion? Any further discussion?
6 All those in favor?

7 (Aye)

8 CHAIRPERSON HOOD: And opposition?
9 So ordered. The staff, would you record the
10 vote.

11 MS. SCHELLIN: The staff records
12 the vote five to zero to zero to set down
13 Zoning Commission Case Number 07-26 as a
14 contested case. Commissioner Jeffries moving
15 and Commissioner Parsons seconding.
16 Commissioners Hood, Etherly and Turnbull in
17 favor.

18 CHAIRPERSON HOOD: Okay, our next
19 case for hearing -- oh, let's give two minutes
20 to transition.

21 (Pause)

22 CHAIRPERSON HOOD: All right,

1 let's welcome Commissioner May. I did that a
2 hearing but I'm used to Commissioner May as
3 the representative for Architect to the
4 Capitol. Now he's the representative of the
5 National Park Service and we want to welcome
6 Commissioner May back. He brings a lot of
7 expertise to the Commission. He and I mostly
8 were agreeable the first time. Hopefully that
9 will continue to happen this time but let's
10 welcome Commissioner May back and I'm looking
11 forward to working with him.

12 COMMISSIONER MAY: Thank you very
13 much, I'm very glad to be here.

14 CHAIRPERSON HOOD: Okay, next,
15 hearing action Zoning Commission Case Number
16 07-29, Bozzuto Development, I hope I
17 pronounced that right, Map Amendment at Square
18 514 Lot 864. Mr. Cochran.

19 MR. COCHRAN: Thank you, Mr.
20 Chair. As you just said, the Applicant is
21 requesting the rezoning of a portion of Lot
22 864 at Square 514. They're asking for

1 rezoning from DD R-5B to DD C-2C. OPE
2 recommends the Commission set down the map
3 amendment for a public hearing. This square
4 is in Northwest Washington. It's bounded on
5 the northeast and west by M 4th and 5th
6 Streets. The New York Avenue corridor
7 demarcates most of the Square's south side.

8 Higher density development, such
9 as the Yale Laundry is already underway on the
10 Avenue. A portion of the Square's southern
11 side, however, fronts on the more localized L
12 Street. The applicant is asking that in the
13 area where New York Avenue and L Street are
14 tangent, that the DD C-2C line be moved 42
15 feet west as a zoning consistency map
16 amendment. The comprehensive plans, future
17 land use map designates different parts of
18 Square 514 as being suitable for different
19 types of uses and densities.

20 Lots fronting on the New York
21 Avenue corridor are deemed appropriate for
22 medium density residential and moderate

1 density commercial use. This includes the
2 eastern part of Lot 864. Lots fronting on L
3 Street, which includes the western side of Lot
4 864, are shown as being appropriate for
5 moderate density residential. The moderate
6 density residential designation also applies
7 to the lots fronted on 5th, M and 4th Streets.

8 These future land use designations
9 are generalized and are not intended to be
10 read as specifically as is the zoning map.
11 The comprehensive plan policies and objectives
12 that are supportive of the application include
13 the objective to develop higher density
14 housing in central Washington as a way of
15 protecting encroachment into other
16 neighborhoods and the filling in of gap
17 parcels such as Lot 864 provided there are
18 appropriate transitions from one type of
19 physical development to another.

20 With the sites being in housing
21 priority Area A of the DD, it will be required
22 to develop housing either on site or nearby

1 through combined lot development. All of
2 Square 514 is in a historic district so there
3 will be a public body reviewing the design of
4 any project that occurs on this site.

5 The proposed map amendment is also
6 consistent with convention center area
7 strategic development plan, the Mount Vernon
8 Triangle Action Agenda, the New York Avenue
9 Corridor Transportation Plan and Development,
10 the same applicant is proposing for directly
11 across New York Avenue from Lot 864.

12 The proposed rezoning would help
13 to further the redevelopment of New York
14 Avenue as a major urban boulevard. While the
15 applicant has not yet demonstrated why the
16 site must be rezoned to be consistent with the
17 comprehensive plan, the request is not
18 inconsistent with the comprehensive plan and
19 several other plans for the area. OP
20 recommends that this map amendment application
21 be set down for public hearing and that the
22 applicant further address why the request

1 should be considered as a consistency
2 amendment.

3 CHAIRPERSON HOOD: Thank you, Mr.
4 Cochran. Any questions of Mr. Cochran? I
5 have a few but Commissioner Jeffries.

6 VICE-CHAIRPERSON JEFFRIES: Yes.
7 I just want to get some clarification here.
8 So this is a consistency case that's being
9 brought by the applicant. But the Office of
10 Planning agrees that there should be an
11 amendment here, correct?

12 MR. COCHRAN: The Office agrees
13 that setting down a request for amendment is
14 certainly appropriate.

15 VICE-CHAIRPERSON JEFFRIES: Okay.
16 So this is very preliminary. You want to see
17 sort of what the Applicant can -- because
18 right now you're not completely sold that this
19 should be amended.

20 MR. COCHRAN: In comprehensive
21 plan terms, we certainly feel that this
22 request is not inconsistent with the

1 Comprehensive Plan.

2 VICE-CHAIRPERSON JEFFRIES: Okay.

3 MR. COCHRAN: Our only
4 disagreement is that there's a slight
5 difference in wording. If it's a consistency
6 amendment, essentially you must rezone it. If
7 it's a map amendment, it's simply not
8 inconsistent to rezone it.

9 VICE-CHAIRPERSON JEFFRIES: Okay,
10 yeah, because I was trying to understand if
11 this is just a simple map amendment --

12 MR. COCHRAN: Both are map
13 amendments but one is a must and the other one
14 is -- well, not inconsistent.

15 VICE-CHAIRPERSON JEFFRIES: Yeah,
16 because there was a lot of discussion
17 obviously about the project which I was, you
18 know, trying to figure out well, why are we so
19 much discussing the project if in fact, you
20 know, this is a consistency case? And we will
21 just deal with the merits based on
22 consistency. And there was so much discussion

1 around the project, but what you're saying is
2 that you think it merits a set-down but you
3 know, we're going to see sort of how this goes
4 forward in terms of, you know, the defense by
5 the applicant.

6 MR. COCHRAN: Yes, of course.

7 VICE-CHAIRPERSON JEFFRIES: Okay,
8 okay, thank you.

9 CHAIRPERSON HOOD: Any other
10 questions? I have kind of along those same
11 lines, so we have a consistency part of this
12 and we have a map amendment part of it. I'm
13 just trying to understand.

14 MR. COCHRAN: Both types of
15 approaches to this are map amendments. It's
16 -- if it were a consistency case, then, in
17 effect, it's being said that you really need
18 to rezone this in order to be consistent with
19 the comprehensive plan. If it's just a map
20 amendment, then whomever is requesting a map
21 amendment would be saying, "We're asking for
22 this map amendment. It's not at all

1 inconsistent with the comprehensive plan or
2 other policies that this map amendment be
3 granted". One is a must, the other one is
4 optional and presumably not a bad thing to do.

5 CHAIRPERSON HOOD: So the one
6 that's a must, we have no problems with that.
7 There's a piece to this that's a must.

8 MR. COCHRAN: No, the Office of
9 Planning is not yet sure that it's a must. We
10 have gotten to the point where we feel that it
11 is not inconsistent with the Comprehensive
12 Plan and it is actually consistent with
13 several other plans to rezone this 42 feet by
14 -- from DDC R-5B to DDC-2C. We are not quite
15 understanding of why the applicant asked for
16 it as a consistency amendment when it seems
17 that it could be done as a simple little map
18 amendment as opposed to a map amendment as a
19 consistency amendment.

20 So since the applicant filed for
21 it as a consistency amendment, we'd just like
22 to know a little bit more about why or even

1 whether that's necessary.

2 CHAIRPERSON HOOD: Any other
3 questions? I'll be frank on this, I'm
4 thoroughly confused. I am, but the rest of
5 them are not. I think this is one of those
6 cases where I'd love to have a hearing so that
7 maybe I'll understand it. Okay, so any other
8 questions?

9 COMMISSIONER MAY: I thought it
10 was just because I was new but I'm confused.

11 CHAIRPERSON HOOD: I am.

12 MS. STEINGASSER: Maybe I could
13 throw a little light on the subject. What OP
14 considers a zoning consistency case is when
15 the zoning is not in align with the comp plan
16 designation. That's not the case here. The
17 R5-B is in align with the moderate density
18 designation on the comp plan. There is an
19 existing alignment. So the request is
20 legitimate because we feel it rises to the
21 standard of not being inconsistent, you know,
22 it gets into that double negative. But we

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1 don't think it qualifies as a zoning
2 consistency because right now the zoning as it
3 exists is consistent with that comp plan
4 designation but we don't think the request
5 itself is inconsistent.

6 VICE-CHAIRPERSON JEFFRIES: You've
7 had this discussion with the developer.

8 MS. STEINGASSER: Yes.

9 VICE-CHAIRPERSON JEFFRIES:
10 Because obviously, I mean, you know, you could
11 have said, you know, you don't really -- I
12 mean, they need a map amendment and eventual
13 PD but --

14 MS. STEINGASSER: They would just
15 need the map amendment.

16 MR. COCHRAN: Yeah, they would not
17 need a PD.

18 VICE-CHAIRPERSON JEFFRIES: I
19 mean, for now, yeah, yeah.

20 MS. STEINGASSER: For now, yeah.

21 MR. COCHRAN: If there were a map
22 amendment and I they did decide to proceed

1 with the development that is -- that they've
2 submitted illustratively. And then that could
3 proceed under zoning at least, as a matter of
4 right.

5 CHAIRPERSON HOOD: Anybody else?

6 COMMISSIONER MAY: Is this because
7 the land use map shows it as split between two
8 different potential uses?

9 MR. COCHRAN: If you take the area
10 where -- excuse me Parcel 864 is, it's not
11 completely clear where the boundary line is
12 intended to be between the one type of use and
13 the other type of use. It could be seen as
14 being at an alley. It could be seen as being
15 where you've got New York Avenue sort of
16 sliding off into L Street.

17 What this amendment -- excuse me,
18 yeah, what this amendment is asking for is
19 essentially, well, define New York Avenue as
20 New York Avenue and then L Street is L Street
21 so let's move the boundary line closer to
22 where New York Avenue and L Street are

1 demarcated. As an ancillary thing, there is
2 an historic building that is going to be moved
3 as part of another project over closer to the
4 corner of 5th and L Street so that's
5 essentially going to keep the DD R-5B area
6 developed at a much lesser density. And so
7 there's kind of a logical dividing line
8 between where that building will be moved and
9 all of the development that is being proposed
10 for New York Avenue which does allow
11 development to go up to 130 feet under DD C-
12 2C.

13 VICE-CHAIRPERSON JEFFRIES: I
14 clearly understand, I mean, in terms of
15 programmatically what they're trying to
16 achieve and I have actually no beef with that.
17 I mean, it was just more just understanding
18 the consistency part because I thought I had
19 the consistency part down and then when I was
20 reading this, I was like what comes first and
21 clearly, the case can be made either way from
22 what I hear you saying. And so you just allow

1 this developer to go forward to try to make
2 the case of consistency, even though it --

3 MR. COCHRAN: Yes, all of us in
4 development review are passionate about zoning
5 and sometimes we do stray into becoming a
6 little bit zoning nerds. Perhaps this fine
7 distinction is a little bit nerdy.

8 VICE-CHAIRPERSON JEFFRIES: Okay.

9 CHAIRPERSON HOOD: All right, any
10 other questions of Office of Planning?

11 VICE-CHAIRPERSON JEFFRIES:
12 Objection.

13 CHAIRPERSON HOOD: Okay, with
14 that, I'm going to move that we set down
15 Zoning Commission Case Number 07-29 and ask
16 for a second.

17 COMMISSIONER TURNBULL: Second.

18 CHAIRPERSON HOOD: Moved and
19 properly seconded. Any further discussion?
20 Further discussion? All those in favor? Aye.

21 (Aye)

22 CHAIRPERSON HOOD: Any opposition?

1 So staff would you record the vote?

2 MS. SCHELLIN: Staff records the
3 vote five to zero to zero to set down Zoning
4 Commission Case Number 07-29 as a contested
5 case. Commissioner Hood moving, Commissioner
6 Turnbull seconding, Commissioners Jeffries,
7 Etherly and May in favor.

8 CHAIRPERSON HOOD: Okay, next,
9 Zoning Commission Case Number 05-36A, K Street
10 Development, 2nd Stage PUD, 250 K Street NE.
11 Mr. Cochran? You're rolling.

12 MR. COCHRAN: Okay, with Order 05-
13 36, the Commission approved a combination of
14 a consolidated and a preliminary PUD for a
15 residential and retail project in Square 749.
16 This square is bounded by K, L, 2nd and 3rd
17 Streets NE. That decision was rendered in
18 2006. The consolidated PUD is under
19 construction and the applicant is now filing
20 for approval of the second stage of the
21 preliminary PUD.

22 OP has examined the application

1 for consistency both with the Commission's
2 previous order and with the subsequently
3 approved comprehensive plan. The application
4 is consistent with both. OP, therefore,
5 recommends that this second stage PUD be set
6 down for a public hearing.

7 The second stage would have
8 approximately 500 residential units and
9 560,000 square feet. There had been a slight
10 typo in one of the tables and we'd said 580
11 but it's 560,000 square feet. There would be
12 13,500 square feet of retail which would
13 include a daycare center and there would be
14 parking for 549 vehicles.

15 The project's height has been
16 lowered since the order was issued for the
17 consolidated and preliminary PUD in order to
18 respond for concerns that were expressed by
19 the Zoning Commission and by the community.
20 The amenities and community benefits are
21 consistent with the preliminary PUD. The most
22 notable of these are the reservation of 10

1 percent of this phase for housing affordable
2 to households earning no more than 80 percent
3 of the area median income. The overall
4 consolidated and second stage PUD would have
5 11 percent of the residential area reserved
6 for such households.

7 This compares very favorably with
8 the eight percent that would be a minimum
9 required of a project of this size under the
10 IZ regulations. The other significant amenity
11 is Central Plaza which would be open to the
12 public during much of the day. The daycare
13 center, neighborhood serving retail and then
14 some of the sustainable uses, materials and
15 practices. All of these are described in more
16 detail in the OP's report and the applicant's
17 statement.

18 The applicant has also agreed to
19 provide additional information before the
20 hearing to clarify certain matters that need
21 more specificity or consistency but OP
22 recommends that this be set down and we'd be

1 happy to answer any questions.

2 CHAIRPERSON HOOD: Okay, Mr.
3 Cochran, let me ask you something on your
4 report. I think it's on page 8. You had a
5 list of issues requiring additional
6 information. Have we come any closer on any
7 of those issues or are all of them still
8 outstanding?

9 MR. COCHRAN: Excuse me. We have
10 come closer. We've had additional discussions
11 with the applicant and it was agreed to
12 provide all of these things. With respect to
13 the first bullet on page 8, it's just a case
14 of being consistent with the use of net versus
15 gross. It was difficult to get that chart
16 developed because of that -- the changes back
17 and forth. So they're going to take care of
18 that.

19 They're already working on getting
20 documentation on why the core area is listed
21 as being 21 percent of the gross square feet.
22 They're already completing drawings to the

1 extent that they would be able to designate
2 the affordable units in the Phase 2 of this
3 project. They've already agreed that it will,
4 of course, they'll need to revise the covenant
5 to take into account the inclusionary zoning
6 regulations when they get issued and so on and
7 so forth.

8 They've given us an executive
9 summary of the traffic study. They'll supply
10 the rest of it. They've -- the applicant's
11 attorney has already agreed that they would be
12 happy to make a good faith effort in marketing
13 the daycare center and the retail for at least
14 five years. And they've already realized that
15 they need to provide more specificity for the
16 landscaping and the green roof areas and so
17 and so forth.

18 Of course, we had additional
19 discussions with the applicant after the
20 report is in. Many of these had been promised
21 to be addressed before we write our report and
22 we did note that but we just felt that it was

1 appropriate to put into the report, not
2 necessarily into the record of tonight, the
3 additional issues that need to be addressed.

4 CHAIRPERSON HOOD: Okay, thank
5 you, Mr. Cochran, based on your testimony just
6 now, I originally was concerned about setting
7 this down with that many outstanding issues.
8 I think we've been through that once before
9 but everything from what you just told me, I
10 don't have any reservations. Anyway,
11 colleagues, any other questions? If not, I'll
12 move that we --

13 COMMISSIONER MAY: Sorry, I'm not
14 fast enough. I have a few. They aren't so
15 much questions but issues that I wanted to
16 raise to make sure that these get clarified,
17 and maybe there are some things that you can
18 answer to this.

19 On the good faith marketing after
20 five years, what else are they going to do?
21 If they can't market it as a daycare center,
22 then whatever they want, I mean, whatever

1 retail? I mean, what's the --

2 MR. COCHRAN: No, presumably, they
3 would have to come back to the Commission to
4 get a modification to the order.

5 COMMISSIONER MAY: Right, but what
6 is it likely that they would do that at that
7 point, or do you have any sense --

8 MR. COCHRAN: I don't want to
9 guess what they would do.

10 COMMISSIONER MAY: Yeah, okay.
11 The big question I have on this is the -- has
12 to do with the height and it's complicated
13 given the changes in elevation around the
14 site. But I've very concerned about the --
15 whether the proposed height violates the
16 Height Act. And I'd like to get some
17 clarification on this. And this is not
18 something I'm really asking for an answer here
19 because it may take awhile to -- from me to
20 even explain my argument. So it's -- I don't
21 want to get into a detailed discussion of it.

22 But the way I read the Height Act,

1 the measuring point is set by basically the
2 highest possible measuring point to give you
3 the maximum height for the building. That
4 establishes the measuring point and the front
5 of the building and if you call that the front
6 of the building then it's on 3rd Street, it's
7 not on K Street and so the street width is 90
8 feet. The maximum height is 110 and so you
9 go to 110.

10 MR. COCHRAN: No actually --

11 COMMISSIONER MAY: This is based
12 on the way I read the Height Act, so --

13 MR. COCHRAN: Maybe we should --
14 we'd be happy to address that further.

15 COMMISSIONER MAY: Yes, please.
16 Just look at it a little bit more carefully
17 and I'm looking only at the very specific
18 language of it. It specifies the height
19 limits based on where the building fronts, how
20 you can choose the front, how you can measure
21 and I mean, unless somebody can string things
22 together in a different order, I'm concerned

1 that this might have to be limited to 110
2 feet. So it would be helpful to see an
3 explanation that makes sense.

4 MR. COCHRAN: Right.

5 COMMISSIONER MAY: When it comes
6 to the -- when we get a better package of
7 drawings, I assume that we're going to get
8 some -- a lot more detail fleshed out, the
9 look of the building and all that, you know,
10 because we have some enlarged elevations and
11 things like that, that really aren't enlarged
12 enough to see what's there and they -- you
13 know, and they need to give us some elevations
14 where they turn off the squiggle function
15 which makes it have those soft lines on it.
16 That's the actual software that you can use to
17 do it, but just so we can see exactly what it
18 is because, you know, sometimes having that
19 kind of a soft drawing fools us into thinking
20 there's level of detail there that there
21 isn't. So I just want to see that.

22 And the last thing is there's

1 reference to lead type components to the
2 building and I think it would be very helpful
3 regardless of whether the applicant is going
4 to attempt to get a lead certification that
5 they complete the lead checklist and submit
6 that. You know, it's a checklist you can get
7 online and, you know, it tells them what
8 points they're going for to -- if they were to
9 do lead certification and I think it's a
10 better way for us to try to quantify those
11 things. So that's it for me.

12 CHAIRPERSON HOOD: Okay, thank
13 you. Commissioner Jeffries?

14 VICE-CHAIRPERSON JEFFRIES: And
15 just a quick question on 2nd Street and if you
16 could refresh my memory, I thought that the
17 NOMA plan talked about 2nd Street being a very
18 busy sort of active artery between the New
19 York Avenue Metro Station and Union Station.
20 Is that correct or was there a plan? I
21 thought that that we discussed sort of this
22 2nd Street being in a very vibrant pedestrian

1 friendly artery.

2 MR. COCHRAN: I would have to look
3 again at the NOMA plan but certainly until you
4 get to about L Street. Second Street is only
5 a one-sided street. You -- all of the
6 language that you just used certainly applies
7 to 1st Street NE which is -- that's intended
8 to be the principal commercial artery.

9 VICE-CHAIRPERSON JEFFRIES: Yeah,
10 I thought --

11 MR. COCHRAN: But 2nd Street is cut
12 by the rail tracks because it's up near the
13 ATFE and then the rail tracks come through on
14 an angle and you do have Central armature, the
15 building to the east, both fronting 2nd Street
16 at one point but then below that it's mostly
17 the rail embankment on the left and the -- and
18 development on the east, on the right.

19 VICE-CHAIRPERSON JEFFRIES: Well,
20 I mean, it's certainly not in the information
21 that's been put before this Commission, but I
22 just -- I thought I had, you know, some time

1 in the last year or two saw something that
2 seemed to indicate that there was supposed to
3 be this real funky kind of arts thing and I
4 thought it was along 2nd but if it's --

5 MR. COCHRAN: There is supposed to
6 be -- I mean, the NOMA plan certainly refers
7 to Artists Live Work and production facilities
8 up there that are related to the arts. But
9 most of this is -- most of that reference was
10 from L Street N where the U-Line Arena
11 (phonetic) is and moving up towards the
12 Florida Avenue Market Area.

13 VICE-CHAIRPERSON JEFFRIES: I see,
14 I see. Okay, that's fine. The reason I asked
15 that was because I looked at all the curb cuts
16 along 2nd and, you know, obviously, you know,
17 that doesn't promote, you know, a lot of
18 pedestrian friendly movement back and forth
19 but you know, I would -- you know, the
20 applicant, if they're in earshot, you know,
21 I'd just like some discussion around that just
22 trying to make certain, because I thought it

1 was a great idea but you know, if it's not
2 part of this development, to help promote
3 that, then that's fine. I just wanted to make
4 certain but thank you.

5 COMMISSIONER TURNBULL: Yeah, I
6 shared your concern originally and then I
7 remembered that where we ran into some issues
8 before that was south of H Street where 2nd
9 Street does become double-loaded. You have
10 Station Place and it was a more pedestrian
11 street. I think that's where maybe you're
12 thinking about it.

13 VICE-CHAIRPERSON JEFFRIES: Yeah,
14 but I remembered that it wasn't double-loaded
15 and that you were against this track and it
16 was supposed to be some funky kind of, you
17 know, sort of artist kind of thing going on
18 but again, I'm just -- you know, we'll get it
19 squared away I guess during the hearing.

20 MR. COCHRAN: Right, and the
21 Commission, in its discussion on the earlier
22 consolidated and preliminary PUD felt that

1 minimizing the curb cuts on K, 3rd and L,
2 would be preferable and therefore, most of the
3 loading or much of the loading rather, went
4 over to 2nd Street which is -- it's not a
5 double-faced street. It doesn't have
6 residences on sides et cetera.

7 VICE-CHAIRPERSON JEFFRIES: That's
8 fine, we'll get it all squared away during the
9 hearing.

10 CHAIRPERSON HOOD: All right,
11 thank you, Mr. Cochran. And colleagues, who
12 will make a motion?

13 VICE-CHAIRPERSON JEFFRIES: Mr.
14 Chair, I make a motion that we set down Zoning
15 Commission Case Number 05-36A, Phase 2, PUD
16 for Square 749.

17 COMMISSIONER MAY: Second.

18 CHAIRPERSON HOOD: Moved and
19 proper second. Any further discussion? Any
20 further discussion? All those in favor?

21 (Aye)

22 CHAIRPERSON HOOD: Any opposition?

1 So will the staff record the vote?

2 MS. SCHELLIN: The staff records
3 the vote five to zero to zero to set down
4 Zoning Commission Case Number 05-36A as a
5 contested case. Commissioner Jeffries moving,
6 Commissioner May seconding. Commissioners
7 Hood, Etherly and Turnbull in favor.

8 CHAIRPERSON HOOD: Next we have
9 Zoning Commission Case Number 07-33, Office of
10 Planning Text Amendment to the Reed-Cooke
11 Overlay, Chapter 14. It was not Mr. Cochran
12 this time. Okay, Ms. Brown-Roberts.

13 MS. BROWN-ROBERTS: Good evening,
14 Mr. Chairman and members of the Commission.
15 I'm Maxine Brown-Roberts from the Office of
16 Planning. BZE Order 17359 approved in June of
17 2006, approved the development of a grocery
18 store on the property otherwise known as the
19 Citadel in the Reed-Cooke area. The Zoning
20 Administrator granted a building permit for
21 the grocery store and with it, a permit to
22 operate beer and wine sales as an accessory

1 use. This permit has been appealed and the
2 BZA has had a public hearing but to date there
3 has not been any ruling. This application has
4 been brought to you today in order to clarify
5 the intent of the zoning regulations on the
6 prohibition of alcohol beverage sales within
7 the Reed-Cooke overlay.

8 Our preliminary review of the
9 Reed-Cooke order for the Reed-Cooke area
10 indicated that a prohibition on sales of
11 alcoholic beverages was not intended to apply
12 to sales within the framework of a larger use
13 selling a very wide range of products.
14 Rather, the intent was to limit liquor stores
15 or stores where the principal use is alcoholic
16 sales.

17 In our submission, we propose that
18 the sales area not occupy not more than five
19 percent of the store. And that the store have
20 a minimum of 30,000 square feet. Tonight was
21 are asking to amend that proposal and we are
22 proposing to change the request to off-street

1 alcohol beverage sales as a primary use.

2 After our application was
3 submitted to the Zoning Commission, we had
4 some further conversations in our office and
5 we thought that we needed to have a broader
6 analysis of exactly what that would entail.
7 And therefore, we want to spend some time in
8 conversation with the Zoning Administrator and
9 also the Committee on any limitation of the
10 size of the area and also of the store size.

11 In requesting that the Commission
12 schedule a hearing on an expedited basis, the
13 Office of Planning specifically requested that
14 the Commission permit a notice of hearing to
15 be immediately advertised rather than waiting
16 for the 20 days otherwise required. And that
17 the hearing could take place after a notice of
18 hearing as been advertised for 30 days instead
19 of 40.

20 In addition, the Office of
21 Planning requests that the Commission
22 authorize the immediate publication of a

1 notice of proposed rulemaking. The Office of
2 Planning, therefore, requests that the
3 proposal be set down for public hearing on an
4 expedited basis. Thank you, Mr. Chairman.

5 CHAIRPERSON HOOD: Okay,
6 colleagues, any questions of Ms. Brown-
7 Roberts? If not I -- any questions? Ms.
8 Brown-Roberts, let me ask, I think you said in
9 your statement and I think probably in your
10 report, I just don't remember or recall it,
11 that when this was done the intent was not to
12 go for -- just to go at primary uses like
13 liquor stores, okay? Is that what --

14 MS. BROWN-ROBERTS: Yes, that's
15 what I stated.

16 CHAIRPERSON HOOD: Okay, because
17 my original question was why was this in front
18 of us, but I won't ask that one. What I will
19 ask is about the expedited hearing. You're
20 asking for 30 days. And I think -- normally,
21 in the report you have what the community is
22 saying. I didn't see that. It may be in

1 here, but I don't remember. But anyway, I
2 think what I would like to see as far as the
3 expedited hearing, we can expedite it as much
4 as possible but we want to make sure that
5 monthly meeting for the ANC is allowable, even
6 if we have to take this in on a special public
7 meeting. I don't know how we get there but we
8 want to make sure that the ANC at least has a
9 chance --

10 MR. RITTIG: Mr. Hood, I have a
11 suggestion.

12 CHAIRPERSON HOOD: Sure.

13 MR. RITTIG: Instead of just
14 giving it the 30 days as requested by the
15 Office of Planning, I could consult and work
16 with the Office of Zoning Staff to make sure
17 that the 30-business day notice required of
18 the ANC Act is not violated and that we
19 advertise it so it -- the date gives the full
20 30 days that's required by the ANC Act.

21 CHAIRPERSON HOOD: Thank you.

22 Anybody have any questions?

1 VICE-CHAIRPERSON JEFFRIES: This
2 is really about trying to accommodate Harris-
3 Teeter (phonetic) right, and their wonderful
4 beer and wine section, right?

5 MS. BROWN-ROBERTS: That's right.

6 VICE-CHAIRPERSON JEFFRIES: Okay.
7 Thank you.

8 MS. STEINGASSER: And if I could
9 just reinforce what Ms. Brown-Roberts was
10 saying, that the language before you after
11 discussion in-house we've actually are now
12 requesting that they advertise more broadly so
13 that the community does have an opportunity to
14 work with OP and that we can then -- you know,
15 whatever action we take is more narrow and not
16 broader. We don't have to readvertise. It's
17 just kind of a safety net.

18 COMMISSIONER MAY: So do you have
19 different language to propose for the
20 advertisement?

21 MS. BROWN-ROBERTS: Yes, yes.

22 COMMISSIONER MAY: Which is, do we

1 have that?

2 MS. BROWN-ROBERTS: It says, "Off
3 premises alcoholic beverage sales as a primary
4 use".

5 MS. STEINGASSER: So instead of
6 the underlying bolded language that starts
7 with the word "provided", it would just say as
8 an accessory use.

9 MS. BROWN-ROBERTS: As a primary,
10 sorry, as a primary use.

11 MS. STEINGASSER: Primary.

12 CHAIRPERSON HOOD: Can you read it
13 for us?

14 MS. BROWN-ROBERTS: Yes.

15 CHAIRPERSON HOOD: Thank you.

16 MS. BROWN-ROBERTS: "Off-premises
17 alcoholic beverages sales as a primary use".
18 The preamble sort of says it prohibits.

19 CHAIRPERSON HOOD: What I was
20 saying "off-premises alcoholic beverages sales
21 as a primary use provided".

22 MS. BROWN-ROBERTS: No, we're just

1 going to leave it there.

2 COMMISSIONER MAY: Period.

3 MS. BROWN-ROBERTS: Yeah, period.

4 COMMISSIONER MAY: As a primary
5 use, period. Doesn't that open --

6 CHAIRPERSON HOOD: That's simple
7 enough.

8 COMMISSIONER MAY: Well, but
9 doesn't that open up the question of whether
10 you're considering lifting limitations on the
11 sale of alcoholic beverages as a secondary use
12 to say you know, the little carry-out deli
13 kind of thing.

14 MS. STEINGASSER: It's possible.
15 That's one thing we want to make sure we
16 understand before we advertise it too
17 strictly. At first we took a more surgical
18 approach to how we wanted to look at it and
19 then we thought, well, we don't know that
20 we're not making other uses now non-
21 conforming. The position is that the language
22 needs to be clarified, that the intent was to

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1 allow it as accessory. We want to make sure
2 we don't create other secondary non-conforming
3 uses in that area.

4 COMMISSIONER MAY: Just making it
5 broader.

6 VICE-CHAIRPERSON JEFFRIES: We
7 want to make it broader till we have time to
8 do some more research prior to the hearing.

9 COMMISSIONER MAY: The reason I
10 would be concerned about that is that, I mean,
11 you're looking to move this on an expedited
12 basis. And I'm afraid if you make it so broad
13 and simply just say as a primary use, that
14 you're going to invite all sorts of questions
15 that you'd prefer not to have to address in
16 that short timeframe and so you're going to
17 wind up with instead of it being, you know, 30
18 days to the hearing and then a relatively
19 quick decision, you could wind up fussing with
20 this for six months and then come back to this
21 language so that it can be --

22 MS. STEINGASSER: We could or we

1 could end up -- I mean, if our position is
2 that it's a clarification of existing
3 language, then it was always the intention
4 that anybody with a legitimate liquor license
5 should be able to sell as an accessory use.
6 We want to make sure we have an opportunity to
7 work with the Zoning Administrator to
8 understand what he considers an accessory use
9 versus a principal use and that we understand
10 what is happening in the neighborhood. If we
11 create it surgically that the implication by
12 reverse is that anything that's not 30,000
13 square feet regardless of how long they've
14 been there with a legitimate liquor license is
15 now non-conforming, that's an adverse effect
16 we don't want to create. So it just gives us
17 the broadest umbrella to make sure we do the
18 research in time. We plan to focus on this
19 very quickly.

20 COMMISSIONER MAY: I'm not sure
21 how advertising in this way would make some
22 use non-conforming because as it is, doesn't

1 the language just read off-premises alcoholic
2 beverage sales, period?

3 MS. STEINGASSER: That's how it
4 reads now. So we're saying -- we're
5 clarifying it by saying as a principal use.

6 COMMISSIONER MAY: I mean, that's
7 a pretty broad restriction to start with,
8 right?

9 MS. STEINGASSER: Right. And we
10 think it's broader than was originally
11 intended. We think the original intention was
12 the free-standing liquor stores.

13 COMMISSIONER MAY: Right.

14 MS. STEINGASSER: We want to make
15 sure that we're not capturing any legitimate
16 certificate of occupancy with legitimate Class
17 B liquor license that's selling --

18 COMMISSIONER MAY: Oh, I see.
19 You're going to render them non-conforming.

20 MS. STEINGASSER: Non-conforming
21 because the implication --

22 COMMISSIONER MAY: But they would

1 have already been rendered non-conforming by
2 this as it is, not even as a proposed language
3 no matter how you propose it. It would have
4 been --

5 MS. STEINGASSER: Well, not
6 necessarily because the Zoning Administrator
7 has written to the record of the BZA case that
8 he does not believe the accessory sales are
9 regulated by this.

10 COMMISSIONER MAY: I see.

11 MS. STEINGASSER: What we want to
12 do is clarify that issue and hopefully before
13 the BZA's decision comes through so that we
14 don't have conflicting positions and
15 interpretations.

16 COMMISSIONER MAY: Okay, now I see
17 where the wrinkle is. I'm just -- maybe I'm
18 alone in this worry but I'm afraid that it's
19 going to wind up creating such a broad
20 discussion. I mean, maybe there's a different
21 way to try to address this issue and have a
22 separate -- you know, rather than amend this

1 particular language, say something that allows
2 this, that specifically allows it for
3 something of this size.

4 VICE-CHAIRPERSON JEFFRIES: So,
5 Commissioner May, your concern about just
6 what's being noticed here, I mean, what's
7 being advertised because --

8 COMMISSIONER MAY: Yeah,
9 absolutely. I'm just afraid that, you know,
10 by advertising it too broadly you're going to
11 create a, you know, a much greater concern in
12 the community and it's going to wind up being
13 lengthier hearings and lengthier discussions
14 and your goal of having this completed on an
15 expedited basis will not be met.

16 VICE-CHAIRPERSON JEFFRIES: So
17 what do you propose in the alternative?

18 COMMISSIONER MAY: Well, you know,
19 it just occurred to me now that a way to
20 handle this would be instead of trying to
21 amend this, and I don't know if there's a C
22 that comes after the B, or where you -- you

1 know, where you move it one level up in the
2 outline form, but to provide a specific
3 allowance for the type of use that's proposed.
4 So you're not changing the regulation except
5 to say this is now explicitly allowed, 30,000
6 square feet, five percent is not explicitly
7 allowed. Do you know what I mean?

8 MS. SCHELLIN: I do know what you
9 mean and we have to discuss it. I do and we
10 discussed that in house about what is the
11 implication of having an explicitly permitted
12 use and then prohibited use? Is it by
13 reference if it's not explicitly permitted,
14 it's prohibited.

15 COMMISSIONER MAY: Is it
16 prohibited.

17 MS. SCHELLIN: And that's what we
18 don't have a feel for yet. We may end up with
19 a longer hearing but that's better than two
20 separate hearings when we have to come back
21 and reclarify the language because we've
22 created a series of non-conformities. I'm

1 sure there is going to be probably some
2 neighborhood opposition and, I mean, there are
3 articles in the paper today about the pro and
4 con but it's limited to the Reed-Cooke area
5 which is a fairly contained area that we feel
6 we can address pretty quickly.

7 COMMISSIONER MAY: Okay, all
8 right, well I've said enough, sorry.

9 CHAIRPERSON HOOD: Any other
10 questions? Okay, with that I would move that
11 we set down Zoning Commission Case Number 07-
12 33 with the new language "off premises
13 alcoholic beverages sales as a primary use",
14 period and ask for a second.

15 VICE-CHAIRPERSON JEFFRIES:
16 Second.

17 CHAIRPERSON HOOD: Moved and
18 properly seconded, any further discussion?
19 Any further discussion? All those in favor?

20 (Aye)

21 CHAIRPERSON HOOD: Any opposition?
22 So ordered. Staff, would you record the vote?

1 MS. SCHELLIN: Chairman Hood, just
2 to clarify, does your motion include the
3 immediate advertising of the proposed
4 rulemaking?

5 CHAIRPERSON HOOD: What I would
6 like to -- yeah, immediate but then Mr. Rittig
7 said he's going to --

8 MS. SCHELLIN: He's going to work,
9 right, right. I just wanted to make sure the
10 public hearing notice and the proposed
11 rulemaking are two separate documents.

12 CHAIRPERSON HOOD: Okay.

13 MS. SCHELLIN: I just wanted to
14 make sure. The vote is recorded five to zero
15 to zero to set down Zoning Commission Case
16 Number 07-33 as a rulemaking case,
17 Commissioner Hood moving, Commissioner
18 Jeffries seconding, Commissioners Etherly, May
19 and Turnbull in favor.

20 CHAIRPERSON HOOD: Okay, the next
21 case -- no, proposed action, I'm sorry,
22 proposed action Zoning Commission Case Number

1 07-13. This is the trustees of the Corcoran
2 Gallery of Art and MR Randall Capital LLC-PUD
3 and related map amendments, Square 645-S.
4 Colleagues, we basically did this.
5 Commissioner May would be able to read a
6 dialogue that we had. That was the only piece
7 that was missing. I think we were ready to
8 vote on this last Thursday. I'm sure a whole
9 lot has not happened within two or three days,
10 so lets take this for a proposed action. Mr.
11 May, do you want to let us know that you did
12 read this?

13 COMMISSIONER MAY: Yes, I did. I
14 read the transcript of the -- I think it was
15 the November 8th hearing and found that quite
16 helpful in some of the questions I have. I do
17 still have a remaining question with regard to
18 the parapet but otherwise, I'm -- you know, I
19 read it. Should I go ahead and bring up this
20 question?

21 CHAIRPERSON HOOD: Yeah, let's go
22 ahead. We had a modification, I think, dated

1 December 6th.

2 COMMISSIONER MAY: Right, and I
3 think, you know, what we saw and I think what
4 we all tended to agree with was the north
5 elevation having a four-foot setback to the
6 penthouse. Here's -- you know, the other
7 thing I did over the weekend in addition to
8 reading the transcript was to read over the
9 Height Act again.

10 VICE-CHAIRPERSON JEFFRIES: You
11 need some better weekends.

12 COMMISSIONER MAY: Yeah, anyway,
13 the way the Height Act reads, the exception
14 for a penthouse is it can go higher than the
15 allowed height of the building provided it is
16 set back by a distance equal to the height of
17 -- that -- okay, which ordinarily would mean
18 that, you know, the parapet, I mean, the
19 penthouse in this circumstance which is 16
20 feet tall on top of 100 feet would have to be
21 set back 16 feet.

22 Well, we're at a 110-foot height

1 limit here so I don't really have a problem
2 with the notion that, you know, you don't have
3 to go all the way up to 110 feet in order to
4 do that setback but I think that the net
5 difference should be that there has to be a
6 minimum of a six-foot setback in order to
7 comply with the Height Act. Do you follow me
8 there?

9 VICE-CHAIRPERSON JEFFRIES: I
10 follow you but what do we have now, Office of
11 Planning.

12 COMMISSIONER MAY: They proposed
13 four feet.

14 VICE-CHAIRPERSON JEFFRIES: Four
15 feet, okay.

16 COMMISSIONER MAY: And I think it
17 needs to be six feet so that it's -- you know,
18 the other way to look at this is to say, okay,
19 well, you can make your building 110 feet tall
20 and then set the penthouse back six feet.

21 VICE-CHAIRPERSON JEFFRIES: Right.

22 COMMISSIONER MAY: Well, we don't

1 really want to make it 110 feet tall in that
2 facade. We'd prefer to have it down at 100
3 feet but if we go ahead and set it back by
4 that six-foot minimum, I think that that
5 complies.

6 CHAIRPERSON HOOD: Okay, let me
7 ask, colleagues, we've heard Commissioner May.
8 I think Office of Planning is recommending we
9 would give them four feet. He's saying two
10 more feet which would make a total of six. Is
11 anybody else moved by his argument?

12 VICE-CHAIRPERSON JEFFRIES: Well,
13 I would like for the Office of Planning to
14 comment if you might, and what Commissioner
15 May has stated because I mean, Commissioner
16 May is -- I mean, he's dealing with the Height
17 Act and compliance. I mean, so I just need to
18 get a thought about your comprehension. I put
19 them on the spot.

20 MS. STEINGASSER: I guess -- how
21 did you get to six feet? Not having spent the
22 weekend with the Height Act, I --

1 COMMISSIONER MAY: I didn't spend
2 the whole weekend with the Height Act. The
3 building as proposed is 100 feet tall,
4 correct? And the penthouse is 16 feet tall.
5 The building is allowed to be 110 feet tall,
6 so if you could imagine that they continued
7 the facade up to 110 feet and they had their
8 penthouse set back by a distance equal to the
9 height above the height of the building, that
10 means that it would have to be set back six
11 feet. So that's why I'm saying leave it at
12 100 feet but set it back at least six feet.

13 MS. STEINGASSER: So you're trying
14 to get closer to the spirit of the Height Act
15 in the setback.

16 COMMISSIONER MAY: Yeah. Well, it
17 just seems like it's a ridiculous exercise to
18 force them to go up to 110 feet with the
19 height of the building and then have a setback
20 you know for the penthouse. I mean, we could
21 say that and it would be fully compliant, but
22 I think that would be kind of silly and, you

1 know, not common sense.

2 MS. STEINGASSER: I think what's -
3 - I guess at this point because I know the
4 things that drive that penthouse structure are
5 what's inside of it. It's the mechanical
6 equipment and the odd configuration of the
7 roof structure, so I don't want to say
8 cavalierly, "Oh, they can do that and that two
9 feet won't impact their program and translate
10 down". Perhaps the Commission could ask the
11 -- you know, take proposed action and ask the
12 applicant to come back prior to final with
13 information as to why they can or cannot do
14 the six feet and consider it at that stage.

15 COMMISSIONER MAY: Right, yeah, I
16 didn't expect that you'd be able to answer for
17 them on that. I mean, I would like to suggest
18 that what we approve is a six-foot setback and
19 that at final they either, you know, show they
20 can do the six-foot setback or explain why
21 it's not legally necessary to do that.

22 VICE-CHAIRPERSON JEFFRIES: I

1 would rather not -- you know, I would rather
2 propose what we have and allow them to come
3 back, just because I don't want to be in the
4 business of -- I mean, I don't know what two
5 feet means to them, you know, and I don't want
6 to be responsible for that. I mean, I think
7 they've heard the comments from the dias here,
8 Commissioner May and I'm prepared to go
9 forward with what's here in front of us and
10 hopefully the Applicant is in earshot. They
11 will come back and sort of address this,
12 because I think what you're saying -- and we
13 were just discussing it, we need to understand
14 that section but I don't want to get into
15 design at this point.

16 COMMISSIONER MAY: Well, yeah --

17 VICE-CHAIRPERSON JEFFRIES: Even
18 two feet.

19 COMMISSIONER MAY: I guess we have
20 a different definition of designing a
21 building. So, well --

22 CHAIRPERSON HOOD: Hold on, hold

1 your point. Hold your point because we're
2 going to do this democratically. I'm going to
3 ask Commissioner Etherly, we're talking about
4 two feet here so I want to see if -- I think
5 there's a way that we can arrange to do it all
6 because there are some things that we asked
7 for at the hearing. It's fresh in my mind, we
8 just had the hearing, before final action and
9 it's how we asked for it. So I would ask --

10 COMMISSIONER ETHERLY: I would
11 just offer a comment, Mr. Chair. Thank you
12 very much for the opportunity to remain
13 committed to democracy, not that that was ever
14 in question here. I understand Mr. May's
15 comments, but I would tend to side with Mr.
16 Jeffries and I would take it Mr. Turnbull, in
17 terms of perhaps some concerns at design, not
18 to suggest that this is veering into that, but
19 design on the fly.

20 As I recall from our discussion
21 previously on this case, there were very
22 specific considerations that spoke to quite a

1 few of the architectural decisions that were
2 made relative to that location of the
3 penthouse because of specific functions
4 peculiar to the Clean Art School as we
5 discussed it from our prior hearing. So I
6 would tend to agree with Mr. Jeffries in terms
7 of not wanting to veer into that direction at
8 this point, thank you.

9 CHAIRPERSON HOOD: Commissioner
10 Turnbull, do you want to comment?

11 COMMISSIONER TURNBULL: Thank you,
12 Mr. Chair. I would agree. I mean, obviously,
13 I'm very concerned about the Height Act and
14 the implications and not trying to set
15 precedence or anything but I know we struggled
16 with this case because of the limitations of
17 the type of equipment they had on the
18 penthouse, too, for the clean room space, I
19 mean, that they needed to have for the art
20 school, some of the exhaust requirements and
21 everything.

22 I guess what I would say is that I

1 would go along with the proposal as it is and
2 maybe make a recommendation that they review
3 the setback and see that at the request of the
4 Zoning Commission that they could study the
5 six foot and see if that could be achieved
6 with a little bit more effort, if that doesn't
7 have an impact.

8 COMMISSIONER MAY: All right, I'm
9 willing to go along with that sort of language
10 to see -- to encourage them to try to achieve
11 that. I will say --

12 VICE-CHAIRPERSON JEFFRIES: The
13 language, though, I mean, we're not --

14 COMMISSIONER MAY: Yeah,
15 encouraging them to try to achieve it and
16 demonstrate it but I would also say that
17 unless they either make it to that point or
18 someone can convince me that I'm worrying
19 about nothing, then I would not vote for it at
20 final action. So I just need to sort of throw
21 that caution out there.

22 CHAIRPERSON HOOD: Okay.

1 COMMISSIONER MAY: And I'll make
2 sure that the Congress is aware of
3 Commissioner Etherly's feelings about
4 democracy back when they pass the Height Act.

5 CHAIRPERSON HOOD: I may have
6 missed that.

7 COMMISSIONER MAY: You missed
8 that.

9 CHAIRPERSON HOOD: I'll have to
10 read the record. No, I'll read the record.

11 COMMISSIONER MAY: I'm just
12 kidding. I'm not going to be talking to
13 Congress about anything in the Height Act,
14 believe me.

15 CHAIRPERSON HOOD: Okay, let me
16 say this, Commissioner May, I've been informed
17 from a legal perspective, we have to vote
18 what's in front of us up or down. But what we
19 can do is, there's already a list, if you'll
20 recall, I've asked for them to look at Mr.
21 George's transportation analysis before final
22 action, and what we can do is ask them if they

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1 wish, to revisit that. We can't mandate that
2 they do this, but we can always ask that they
3 look at that issue --

4 COMMISSIONER MAY: Right, that's
5 fine.

6 CHAIRPERSON HOOD: -- before final
7 action. But we know where you stand. We hear
8 you loud and clear. Okay, other than --

9 COMMISSIONER TURNBULL: I have
10 this feeling, Mr. Chair, that the Applicant
11 will do their best efforts to review that
12 situation and to make whatever practical
13 effort they can to accommodate that.

14 CHAIRPERSON HOOD: Was that for
15 me, Mr. Turnbull or for the Applicant?

16 COMMISSIONER TURNBULL: I think
17 that's for the Applicant. I think they heard
18 Mr. May loud and clear.

19 VICE-CHAIRPERSON JEFFRIES: Dionne
20 Warwick, Psychic Network.

21 CHAIRPERSON HOOD: You know, let
22 me just rehash some of the issues. This is

1 fresh in our mind. You remember Ms. Giadanno
2 (phonetic) representing her client mentioned
3 about the lay-by off peak hours, the doors
4 closed, and those are some of the things we
5 asked that they look at but does that move
6 anyone even though the transportation, TDM and
7 the TMP is going to be relooked at from the --
8 from Mr. George's, the transportation
9 consultant's standpoint, I've asked that they
10 look at that and come back with something
11 final.

12 Other than that and Mr. May's
13 issue on the height or possible violation of
14 the Height Act, and Mr. -- what I'm sure is
15 not -- we'll let them comment, I don't want to
16 say it's a violation of the Height Act. Also
17 what we're going to be -- what we're approving
18 is the modified -- let me find it and see what
19 it was named exactly. It's our modified
20 drawings dated December 6th, 2007. This is
21 what we would be approving and Mr. Turnbull,
22 for some reason I wrote down here "more green

1 roof".

2 COMMISSIONER TURNBULL: I always
3 like more green roof.

4 CHAIRPERSON HOOD: Well, I didn't
5 --

6 COMMISSIONER TURNBULL: I'll push
7 for that all the time.

8 CHAIRPERSON HOOD: Okay, I wrote
9 it down here for some reason.

10 COMMISSIONER MAY: I think that
11 that came up in an earlier --

12 CHAIRPERSON HOOD: And earlier --
13 so you're satisfied, we're fine with that.

14 COMMISSIONER MAY: I think they
15 added more green roof.

16 CHAIRPERSON HOOD: Okay, okay.

17 COMMISSIONER MAY: Commissioner
18 Hood?

19 CHAIRPERSON HOOD: Yes.

20 COMMISSIONER MAY: There were a
21 couple of other items that I thought needed to
22 be flagged in the proposed action, which is

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1 the easement that was required per DDOT's
2 report --

3 CHAIRPERSON HOOD: I'm sorry.

4 COMMISSIONER MAY: That's okay.

5 The easement that was mentioned in DDOT's
6 report, that there be an easement to protect
7 the H Street right of way and then there's the
8 TDM measures that also needed to be a
9 condition of the approval.

10 The last thing that I wanted to
11 mention was that the Applicant do everything
12 that it can to improve the landscaping and
13 visual appeal of the North street scape, so
14 that the building across the street is not
15 staring at an unpleasant back side of a
16 building.

17 CHAIRPERSON HOOD: I had mentioned
18 something about TMP.

19 COMMISSIONER MAY: Yeah, you had
20 mentioned something about TMP but I wasn't
21 sure whether it was aligned with what was in
22 DDOT's report because they had those two

1 conditions.

2 CHAIRPERSON HOOD: Right, I want
3 to make sure that's part of the TMP and
4 TDM's.

5 COMMISSIONER MAY: All right, very
6 good.

7 CHAIRPERSON HOOD: Okay, yeah, I
8 appreciate that. I just want to make sure we
9 get everything captured and I appreciate you
10 mentioning that. You're right, they did have
11 two, but that was all inclusive and now the
12 landscape, what particularly are you asking
13 for when you ask them to --

14 COMMISSIONER MAY: Well, I
15 wouldn't dream of trying to design it for
16 them. But I think that we had some discussion
17 at the hearing about taking some steps to
18 improve the street scape and either with
19 plantings or with, you know, street furniture
20 or something that could make that a more
21 pleasant walkway for people going to the park
22 and also for people to look at from across the

1 way, and I think that there was sufficient
2 agreement at the hearing from the Applicant
3 that I'm confident that they'll take a good
4 look at that.

5 CHAIRPERSON HOOD: So I'm sure
6 before final they'll give us maybe a sheet
7 showing the landscaping and how they've
8 improved it.

9 VICE-CHAIRPERSON JEFFRIES: So,
10 Mr. Chair, I mean, obviously, I mean, to make
11 a motion here, we won't have to get into a lot
12 of that. I mean, that's going to show up in
13 the order, correct, in terms of some of the
14 things that we're discussing here?

15 CHAIRPERSON HOOD: Right, but we
16 want to make sure that we put it out there so
17 when we get to that point, we won't have to
18 visit it then. It will already be visited.
19 That's why we're kind of -- even though we
20 just had to deliberate it a lot in our
21 hearings, unlike the BZA, we do it during our
22 hearings as opposed to during meeting times.

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1 So I think we just need to get it on the
2 record so you know, we won't wait until -- you
3 know, delay anybody's time waiting till final
4 action, then we have all these problems, and
5 we have to delay that.

6 VICE-CHAIRPERSON JEFFRIES: Okay,
7 well, I'd like to make a motion, Mr. Chair,
8 that we approve the propose action Zoning
9 Commission Case Number 07-13 Trustees of the
10 Corcoran Gallery of Art and MR Randall Capital
11 LLC-PUD and related map amendment at Square
12 643-S and --

13 COMMISSIONER ETHERLY: Second.

14 VICE-CHAIRPERSON JEFFRIES: Thank
15 you, and I'd like to finish that, and part of
16 that motion assumes the modified penthouse
17 wall proposal on the north side of the
18 project. It also includes language and we
19 will have that as part of the order, to
20 address the ground floor of that north
21 elevation.

22 That proposal also addresses the

1 color scheme, the color schemes from what was
2 presented originally by the developer, Scheme
3 B, Scheme B, and is there anything else that
4 we want in this order.

5 COMMISSIONER ETHERLY: And just to
6 make sure, Scheme B was the middle scheme.

7 VICE-CHAIRPERSON JEFFRIES: That
8 was absolutely the middle scheme.

9 COMMISSIONER ETHERLY: Thank you.

10 CHAIRPERSON HOOD: Now,
11 discussion, okay, it's been moved and
12 seconded. Any further discussion? Does
13 everybody agree with that?

14 COMMISSIONER MAY: Yeah, but we
15 also had the DDOT stuff was also included in
16 that motion, yes, the DDOT easement?

17 VICE-CHAIRPERSON JEFFRIES: Okay,
18 I wasn't getting into that level of detail
19 because my assumption is that that would show
20 up in the order and we'll check that in final
21 action but we can say that.

22 CHAIRPERSON HOOD: I would just

1 add a friendly amendment to say other things
2 as requested at the appropriate time, that
3 will cover it.

4 VICE-CHAIRPERSON JEFFRIES: Okay,
5 as so noted by the Chair part of the motion.

6 CHAIRPERSON HOOD: Okay, it's
7 moved and properly seconded. Hopefully
8 everybody is confused and any further
9 discussion? All those in favor?

10 (Aye)

11 CHAIRPERSON HOOD: Any opposition?
12 So ordered. Staff, would you record the vote?

13 MS. SCHELLIN: The staff records
14 the vote five to zero to zero to approved
15 proposed action in Zoning Commission Case
16 Number 07-13 as stated by Vice Chairman
17 Jeffries, Commissioner Jeffries moving,
18 Commissioner Etherly seconding, Commissioners
19 Hood, May and Turnbull in favor.

20 COMMISSIONER MAY: Mr. Chairman,
21 as the remaining work of the Commission
22 tonight is final action on cases that I have

1 not been part of, I was going to leave the
2 meeting.

3 CHAIRPERSON HOOD: We would like
4 for you to stay with us, Commissioner May, but
5 if you have to leave -- no, I'm just --

6 COMMISSIONER MAY: I'll watch the
7 webcast.

8 CHAIRPERSON HOOD: By the time you
9 get home, it will be off, I'm sure. Okay.
10 Thank you, Commissioner. Okay, the final
11 action -- what we're going to do and it won't
12 take long, we're going to move B to the first
13 case, Zoning Commission Case Number 06,48 the
14 text and map amendments - Georgia Avenue
15 Commercial Overlay District.

16 I did not participate so I'll by
17 turning it over to the Vice Chair.

18 VICE-CHAIRPERSON JEFFRIES: Thank
19 you, Mr. Chair. Zoning Commission Order 06-43
20 is a text and map amendment to establish a map
21 of the Georgia Avenue Commercial Overlay
22 District. You might recall, Commissioners,

1 that this involves the Georgia Avenue-Petworth
2 Metro Station Area in Quarter Clan (phonetic)
3 which recommended the establishment of an
4 overlay district to stabilize and encourage
5 redevelopment. I believe my recollection of
6 that hearing was that there was overwhelming
7 support on the Commission to go forward on
8 this one.

9 We did receive, however, in the
10 record from Council Member Jim Graham dated
11 November 1st, 2007, a friendly amendment to
12 the order. In it, it states, "On 1329.3 the
13 following uses are prohibited within the GA
14 overlay district; liquor store and other
15 similar establishment which primarily sells
16 alcoholic drinks for off-premises
17 consumption."

18 The council member wanted to make
19 a change to that but unfortunately from our
20 understanding that request really comes from
21 the notice that was advertised on the language
22 and that was not correct. It's my

1 understanding that as it states, 1329.3 does
2 not exist. And that what we have in front of
3 us is, in terms of the order that is the
4 proposed order, is the correct order, which
5 is, I believe 1329.1(f). Yes, so 1329.1(f)
6 which simply just states liquor store is all
7 that is set forth in the proposed order.

8 So while we absolutely appreciate
9 the council member's suggestion, we -- it's
10 really not relevant to what we're trying to
11 do. If there are any comments or questions
12 from any of the Commissioners?

13 COMMISSIONER ETHERLY: I'd like to
14 jump in, Mr. Vice Chair and just note for
15 recollection of my colleagues that during our
16 prior experience with this case, the council
17 member's letter, I believe, was in part in
18 response to my query regarding the issue of
19 liquor stores and as you indicated in a prior
20 version, liquor store or other similar
21 establishment which primarily sells alcoholic
22 drinks for off-premises consumption and the

1 question spoke to the issue of whether or not
2 there was some gray area that perhaps could
3 benefit from clarification and I believe that
4 was the spirit in which the council member
5 offered his correspondence.

6 As you indicated the current
7 version before the Commission now simply
8 enumerates the prohibited uses in Section
9 1329.1 and in relevant portion 1329.1(f)
10 liquor store. I'm comfortable with that
11 language. I didn't have any concern with the
12 earlier version. I just wanted to make sure
13 there was not an inadvertent gray area if you
14 will. I'm comfortable with the language as
15 it's enumerated. I think it perhaps would be
16 viewed more expansively because it takes out
17 that primarily, you know, or other similar
18 establishment and just speaks specifically to
19 liquor store.

20 I'm comfortable with that language
21 and would be prepared to move forward.

22 VICE-CHAIRPERSON JEFFRIES: Thank

1 you, Commissioner Etherly. Any other comments
2 from participating --

3 COMMISSIONER TURNBULL: No, Mr.
4 Jeffries. I just think that obviously what he
5 was trying to do was cover that gray area with
6 either grocery stores or -- and that's really
7 not at issue here before us right now, so I
8 think we've covered the issue of liquor stores
9 completely.

10 VICE-CHAIRPERSON JEFFRIES:
11 Absolutely. Okay, well, if there's no further
12 comments, I make a motion that we approve on
13 the final action Zoning Commission Case Number
14 06-48, text and map amendments, Georgia Avenue
15 Commercial Overlay District.

16 COMMISSIONER TURNBULL: Second.

17 VICE-CHAIRPERSON JEFFRIES: Thank
18 you, Commissioner Turnbull. Any comments?
19 Okay. All in favor say aye?

20 (Aye)

21 MS. SCHELLIN: The staff --

22 VICE-CHAIRPERSON JEFFRIES: Any

1 opposition?

2 MS. SCHELLIN: Sorry.

3 VICE-CHAIRPERSON JEFFRIES: No.

4 So ordered.

5 MS. SCHELLIN: The staff records
6 four to zero to one, Commissioner Jeffries
7 moving -- I'm sorry, this is to approve final
8 action Zoning Commission Case Number 06-48.
9 Commissioner Jeffries moving, Commissioner
10 Turnbull second, Commissioner Etherly in favor
11 and Commissioner Parsons in favor by absentee
12 ballot.

13 CHAIRPERSON HOOD: I didn't
14 participate. Okay, I don't know if you
15 mentioned that.

16 MS. SCHELLIN: I'm sorry, and Mr.
17 Hood not voting having not participated.

18 CHAIRPERSON HOOD: Okay, thank
19 you, Vice Chair and also Michelle. Okay, the
20 next Zoning Commission Case Number 06-30.
21 This is the Pollin Memorial Community
22 Development Consolidated PUD and related map

1 amendment. I think we've -- Ms. Schellin
2 first.

3 MS. SCHELLIN: Staff has nothing
4 further to add to this other than to say that
5 Mr. Parsons didn't -- had recused himself and
6 Mr. Etherly did not participate in this case.

7 COMMISSIONER ETHERLY: And Mr.
8 Chair, by virtue of the staff's recognition
9 that I did not participate in the case, I'd
10 like to request the same clemency that Mr. May
11 was able to obtain for himself and depart
12 early.

13 CHAIRPERSON HOOD: Thank you,
14 Commissioner Etherly. Have a nice evening.

15 COMMISSIONER ETHERLY: Thank you.

16 CHAIRPERSON HOOD: Okay, I hope
17 everybody has participated because if you
18 didn't and you leave, we won't have a quorum.
19 Okay, we have fleshed a lot of this out and we
20 don't need to belabor it. Also, we received
21 something from the National Capital Planning
22 Commission saying that it has no impact, the

1 proposal is not inconsistent with the
2 comprehensive plan and it says this action
3 does not result in requirements to transfer
4 jurisdictional of the federal park land to
5 amend the highway plan.

6 So in other words, they're saying
7 they have no effect to oppose the relevance to
8 the scale and density and that's so noted. I
9 would move approval of Zoning Commission Case
10 Number 06-30 and ask for a second.

11 VICE-CHAIRPERSON JEFFRIES:

12 Second.

13 CHAIRPERSON HOOD: It's been moved
14 and properly seconded. All those in favor?

15 (Aye)

16 CHAIRPERSON HOOD: Any opposition?
17 So the staff can record the vote.

18 MS. SCHELLIN: The staff records
19 the vote three to zero to two to approve final
20 action of Zoning Commission Case Number 06-30;
21 Commissioner Hood moving, Commissioner
22 Jeffries seconding, Commissioner Turnbull in

1 favor, Commissioner Parsons not voting, having
2 recused himself and Commissioner Etherly not
3 voting having not participated.

4 CHAIRPERSON HOOD: Okay, the next
5 case -- okay, the next case is Zoning
6 Commission Case Number 05-05 text amendment,
7 Emergency Shelters in C-M-1 and C-M-2
8 districts. Ms. Schellin?

9 MS. SCHELLIN: The staff has
10 nothing further to add to this other than we
11 have received an updated OP report.

12 CHAIRPERSON HOOD: Okay, you know,
13 I know a lot -- what I was going to say about
14 2210 Ambers Place (phonetic), I had a lot to
15 say and I read Ms. Steingasser's report and I
16 know it's not in our jurisdiction. Some of
17 the things in the report were alarming. So I
18 would just, you know, people need a warm place
19 to stay and my remarks, I'm not going to even
20 bring them up here but I can tell you I was
21 just taken back when I found out they had
22 money to get there and I don't know, do they

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1 provide a meal when you get there? Oh, okay,
2 Ms. Brown-Roberts.

3 MS. BROWN-ROBERTS: The details
4 that they gave me is that they provide some
5 food but it is not a dinner.

6 CHAIRPERSON HOOD: I mean, the
7 place is not really -- if you're homeless and
8 you're somewhere downtown and you're looking
9 for shelter, you've got to come up with money
10 to get out there and then it's around the
11 corner from my house, so I know. And it's not
12 in the most convenient site, but that's
13 neither here nor there. There's enough
14 issues. So any other discussion? I would
15 move approval of Zoning Commission Case Number
16 05-05 and ask for a second.

17 COMMISSIONER TURNBULL: Second.

18 CHAIRPERSON HOOD: Any further --
19 it's moved and properly seconded. Any further
20 discussion? Any further discussion? All
21 those in favor?

22 (Aye)

1 CHAIRPERSON HOOD: Any opposition?
2 So staff would you record the vote?

3 MS. SCHELLIN: The staff records
4 the vote four to zero to one to approve final
5 action in Zoning Commission Case Number 05-05,
6 Commissioner Hood moving, Commissioner
7 Turnbull seconding, Commissioner Jeffries in
8 favor, Commissioner Parson in favor by
9 absentee ballot, Commissioner Etherly not
10 voting having not participated.

11 CHAIRPERSON HOOD: Okay, next --

12 MS. STEINGASSER: Mr. Chairman,
13 can I qualify what was just approved? Was
14 that the language that was in our report that
15 allowed for the certificate of occupancy
16 within a year? Okay.

17 CHAIRPERSON HOOD: I'm sure it was
18 but tell me what page you're on.

19 MS. STEINGASSER: I'm looking on
20 page 3 of the OP report.

21 CHAIRPERSON HOOD: Right, yeah.

22 MS. STEINGASSER: Okay.

1 CHAIRPERSON HOOD: The emergency
2 shelter located at 2210, yes, 2210 is in
3 there. Okay. Zoning Commission Case Number
4 07-24, text amendment of CBRFs, Ms. Schellin?

5 MS. SCHELLIN: You have before you
6 the notice of emergency and proposed
7 rulemaking.

8 CHAIRPERSON HOOD: Okay, thank
9 you. I think the NCPC letter speaks for
10 itself and also we are in receipt of a letter
11 from Sarah Green, Advisory Neighborhood
12 Commission 4-B-01 which probably should have
13 been dealt with at the hearing but we take
14 note of that. Does that move anyone? Is
15 anyone moved by the letter from Commissioner
16 Sarah Green? Okay, hearing nothing, I would
17 move approval of Zoning Commission Case Number
18 07-24 and ask for a second.

19 VICE-CHAIRPERSON JEFFRIES:
20 Second.

21 CHAIRPERSON HOOD: Move and
22 properly seconded. Any further discussion?

1 Any further discussion? All those in favor?

2 (Aye)

3 CHAIRPERSON HOOD: Any opposition?

4 So staff would you record the vote?

5 MS. SCHELLIN: The staff records
6 the vote four to zero to one to approve final
7 action, Zoning Commission Case Number 07-24.
8 Commissioner Hood moving, Commissioner
9 Jeffries seconding, Commissioner Turnbull in
10 support, Commissioner Parsons in support by
11 absentee ballot, Commissioner Etherly not
12 voting having not participated.

13 CHAIRPERSON HOOD: I just want to
14 really thank the Office of Planning and also
15 the Office of Attorney General and out own
16 staff, the Office of Zoning for making sure
17 those commissioners who come in for an hour
18 and a half or two hours are very well
19 prepared. I greatly appreciate it and
20 Michelle, do we have any further business?

21 MS. SCHELLIN: No, sir.

22 CHAIRPERSON HOOD: Okay,

1 colleagues, thank you very much. This meeting
2 is adjourned.

3 (Whereupon, at 8:15 p.m. the
4 above-entitled matter concluded.)

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